and reasonable price for the property. The objection as to a possible disinclination to transfer property may be obviated, perhaps, by providing for some statutory publicity of the transfer, and thereby charge creditors with full notice of the facts.

CONTRACTS TO EMPLOY ONLY UNION MEN. — In the relations between an employer, a labor union, union members, and non-union laborers, one of the reciprocal rights involved is freedom to enter into or to refrain from contracts of employment. The destruction of this expectancy may be the basis for actions in tort; it is also capable of being surrendered by contract. Although the question of tort arising from interference with the right has called forth much discussion, and although similar contracts limiting expectancy of traders are the subject of numerous cases on the restraint of trade, contracts dealing with labor expectancy are seldom before the courts. The Court of Appeals of New York, reversing the Appellate Division,[1] has recently sustained a three-cornered contract between an employer, a labor union, and the firm's employees, which provided that only union members should be employed, and only such of those as should be in good standing, and that on request of the union the firm should discharge all others. *Jacobs* v. *Cohen*, 183 N. Y. 207. The decision involves two questions: (1) whether an employer can make, with laborers or with a third party, a binding agreement to limit his expectancy in the labor market; and (2) whether laborers may engage among themselves to destroy the expectancy of other laborers. Another New York court has just decided, in accordance with the prevailing law,[2] that an employer's privilege of employing or discharging union or non-union men at his own caprice is protected by the constitutional guaranties. *People* v. *Marcus*, 34 N. Y. L. J. 1149 (N. Y. App. Div., Dec. 1905). A workman's freedom of employment must also be a property right, and contracts by either to limit his own freedom will be enforceable unless invalid for some reason of policy.

Logically considered, the employer's agreement was to confine his competition for labor to a narrow class, but he did not contract with a competitor, and only such combinations are forbidden, since from them monopoly is more likely to ensue. As contracts for exclusive agency,[3] exclusive dealing,[4] and exclusive employment[5] are freely enforced, there should be not the least objection to the employer's contract.

Under the New York doctrine that procuring without fraud or intimidation the discharge of a fellow servant is not actionable unless done with an improper motive,[6] a contract to effect the same result will of course be unobjectionable unless it be inspired by malevolence.[7] By another view,

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[1] Jacobs *v.* Cohen, 90 N. Y. Supp. 854; 18 HARV. L. REV. 471.

[2] Gillespie *v.* The People, 188 Ill. 176. See also State *v.* Julow, 129 Mo. 163.

[3] Central Shade Roller Co. *v.* Cushman, 143 Mass. 353.

[4] Chicago, etc., Railroad Co. *v.* Pullman Car Co., 139 U. S. 79, 89.

[5] Pilkington *v.* Scott, 15 M. & W. 657.

[6] National Protective Ass'n *v.* Cumming, 170 N. Y. 315; followed in Wunch *v.* Shankland, 179 N. Y. 545; 59 N. Y. App. Div. 482. See also "Interference with Contracts and Business in New York," by E. W. Huffcutt in 18 HARV. L. REV. 423, 439.

[7] See Curran *v.* Galen, 152 N. Y. 33; affirmed but distinguished in National Protective Ass'n *v.* Cumming, *supra*.

to prevent employment of a laborer is a *prima facie* tort,[8] unjustified by labor competition.[9] Apparently it would follow that an agreement which prevents employment is illegal. But it is believed that the general statement needs qualification, and that the decisions are best explained upon the principle that justification is withheld only where the competitive injuring pressure is applied through unwilling outsiders, and because of the interference with those third parties.[10] Consequently, a contract peaceably obtained with the outsider, in this case the employer, removes that objection. Obviously, fraud or force in obtaining the agreement would for a different reason render it unenforceable. Nor does it seem that the laborers' contract is against policy as a restraint of trade. From an economic standpoint a combination of rival laborers limits competition as truly as does a combination of rival merchants, but the courts now discriminate, and favor contracts between laborers, although they are intended to stifle competition and raise wages.[11] By analogy to the modern cases on restraint of trade,[12] public policy should not countenance such contracts when they afford more than a reasonable business protection to the parties, and when their result approaches monopoly; but until further decisions readjust the balance between the policy of unfettered contract and the abhorrence of monopoly, it appears that the common "union shop" contracts will be enforced.

EJECTMENT FOR ENCROACHMENTS ON LAND ABOVE THE SURFACE. — Although an action on the case for a nuisance is allowed both in England and in the United States for projections of parts of buildings over adjoining land,[1] the advantages of ejectment have led in this country to attempts to apply it to such situations. The cases, however, are so few and contradictory that there is still occasion for a reference to fundamental principles in the effort to work out a correct result. In legal contemplation land is regarded more as a solid or volume than as a surface, although its third dimension is necessarily indeterminate. As it may be divided vertically, so there may be horizontal divisions, and there may be an estate in the minerals underneath or in the upper story of a house without ownership of the surface. It is quite possible, therefore, that there should be several estates coextensive with the same lateral limits, and that different occupants should be in possession above the surface, on the surface, and below it. But as description of land in the ordinary form presumptively includes everything above and below the surface, so possession of the soil is presumed to extend up and down unless rebutted by the possession of another. For example, it has been held that where adequate adverse possession of the surface gave title to it, the title did not cover mines in operation underneath.[2]

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[8] Erdman *v.* Mitchell, 207 Pa. St. 79. See also "The Closed Market, the Union Shop, and the Common Law," by Wm. Draper Lewis, in 18 HARV. L. REV. 444, 451.

[9] Plant *v.* Woods, 176 Mass. 492.

[10] See 17 HARV. L. REV. 65.

[11] *Cf.* Commonwealth *v.* Hunt, 4 Met. (Mass.) 111. But see *contra*, People *v.* Fisher, 14 Wend. (N. Y.) 6, representing the earlier view.

[12] See Nordenfelt *v.* Maxim, etc., Co. (1894), A. C. 535.

[1] Fay *v.* Prentice, 14 L. J. C. P. (N. S.) 298; Codman *v.* Evans, 89 Mass. 431.

[2] Delaware and Hudson Canal Co. *v.* Hughes, 183 Pa. St. 66.